

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

In re:	§	
	§	Case No. 07-53439-RBK
Green Aggregates, Inc	§	
	§	Chapter 11
Debtor	§	

**JOINT MOTION OF THE CHAPTER 11 TRUSTEE AND OPPENHEIMER,
BLEND, HARRISON AND TATE, INC. TO ENFORCE ORDERS OR
ALTERNATIVELY TO CONVERT THE CASE TO CHAPTER 7**

**To the Honorable Ronald B. King,
United States Bankruptcy Judge:**

COMES NOW RAYMOND W. BATTAGLIA AND OPPENHEIMER, BLEND, HARRISON & TATE, INC., the Chapter 11 Trustee ("Battaglia" or the "Trustee") and his counsel ("OBHT" or collectively with the Trustee the "Movants") and files this their Joint Motion to Enforce the Court's Orders Allowing the Final Fee Applications of the Trustee and OBHT or Alternatively to Convert the Case to Chapter 7 (the "Motion to Enforce"), and in support thereof would respectfully show the Court as follows:

**I.
JURISDICTION**

1. The Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Local Rules of this Court. This is a core proceeding under 28 U.S.C. § 157(b). The relief requested herein is authorized under Section 365 of Title 11 of the United States Code (the "Bankruptcy Code").

II.
FACTUAL BACKGROUND

2. On December 31, 2007, Green Aggregates, Inc. (the “Debtor”) filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code (the “Bankruptcy Case”).

3. On February 15, 2008, Equity Bank, SSB, filed a Motion for Appointment of a Trustee or, in the Alternative, an Examiner under Section 1104 [Docket No. 116].

4. On March 26, 2008, the Court entered an Order Directing Appointment of a Chapter 11 Trustee [Docket No. 165]. On March 28, 2008, the United States Trustee filed its Notice that, after consultation with the parties, it had appointed Battaglia as the Chapter 11 Trustee in the Bankruptcy Case [Docket No. 170] and filed its Application to Approve Appointment of Chapter 11 Trustee [Docket No. 171].

5. On March 31, 2008, the Court entered an Order Approving the U.S. Trustee’s Appointment of the Chapter 11 Trustee [Docket No. 176] (the “Order Approving Appointment”).

6. The Trustee filed his Application to Employ OBHT as Attorney for Chapter 11 Trustee on April 7, 2008 [Docket No. 193]. The Court approved the Trustee’s Motion to Employ OBHT on April 8, 2008 [Docket No. 198].

7. On September 29, 2008, Chiron Equities, LLC (“Chiron”) filed a Chapter 11 Plan of Reorganization (“Original Plan”), and on December 8, 2008, Chiron filed a Modification to Proposed Plan of Reorganization (“Modified Plan”, together with the Original Plan hereinafter collectively referred to as the “Plan”).

8. The Order Confirming Amended Plan of Reorganization for Green Aggregates, Inc. as Modified under Chapter 11, Title 11, United States Code (the

“Confirmation Order”) was entered December 31, 2008. The Plan as modified and confirmed by the Confirmation Order is hereinafter referred to herein as the (“Confirmed Plan”).

9. The Trustee filed his Final Application for Compensation on December 29, 2008 [Docket No. 436]. The Court entered an Order Allowing the Final Fee Application of the Trustee and awarding final fees in the amount of \$32,850.00 and reimbursement of expenses in the amount of \$2,558.00 on January 13, 2009 [Docket No. 444] (the “Trustee Final Fee Order”).

10. OBHT filed its Final Application for Compensation on February 11, 2009 [Docket No. 449]. The Court entered an Order Allowing the Final Fee Application of OBHT in and awarding final fees in the amount of \$81,242.00 and reimbursement of expenses in the amount of \$5,139.58 on March, 5, 2009 [Docket No. 451] (the “OBHT Final Fee Order”, collectively with the Trustee Final Fee Order the “Final Fee Orders”).

11. The Confirmed Plan became effective on January 12, 2009 (“Effective Date”). The Confirmed Plan stated that that each holder of an “Allowed Class I Administrative Claim shall receive from the Debtor with respect to such Allowed Claim, either (i) the amount of such Allowed Claim from the Debtor... or (ii) such other treatment as may be agreed upon in writing by such holder.”

12. To date OBHT has received \$31,666.40 and the Trustee has received \$28,808.60 from the Debtor leaving an unpaid balance of \$54,055.18 owed to OBHT and \$6,600.00 owed to the Trustee by Debtor. To the extent Movants have agreed to “other treatment”, the Debtor has breached each and every such agreement and has not paid the

Allowed Administrative Claims of the Trustee and OBHT. The Debtor is therefore in default under the terms of Confirmed Plan and has made no effort to cure such defaults.

13. Movants request that the Court enter an order requiring that the previously approved, yet unpaid fees and expenses of the Trustee in the amount of \$6,600.00 and of OBHT in the amount of \$54,055.18 be paid immediately, along with \$6,470.00 in interest¹ on the unpaid balance through July 5, 2010, with per diem interest thereafter of and \$13.30 and attorneys fees incurred in the preparation and prosecution of this Motion to Enforce in the amount of \$5,000.

14. In the alternative Movants request that the Court reconsider the prior Confirmation Order and immediately convert the Bankruptcy Case to a case under Chapter 7. Section 1112(b)(4)(N) of the Bankruptcy Code provides that a material default by the debtor under a confirmed plan of reorganization constitutes 'cause' for the conversion of a case to Chapter 7. Cause exists to convert the Bankruptcy Case to Chapter 7 as the Debtor is in material default under the Plan and has made no effort to cure such defaults.

WHEREFORE, PREMISES CONSIDERED, Raymond W. Battaglia and Oppenheimer, Blend, Harrison and Tate, Inc., move the Court for an order requiring that previously approved, yet unpaid fees and expenses of the Trustee in the amount of \$6,600.00 and of OBHT in the amount of \$54,055.18, along with \$11,470 for accrued interest through July 5, 2010 and attorneys fees incurred in the preparation and prosecution of this Motion to Enforce, be paid to Movants in certified funds within five (5) days of the entry of an Order, or alternatively to convert this Bankruptcy Case to a case under Chapter 7, and for such other and further relief, as may be just and equitable.

¹ Calculated at a simple interest rate of 8% per annum.

Respectfully submitted this the 7th day of July, 2010,

OPPENHEIMER, BLEND,
HARRISON & TATE, INC.
711 Navarro, Sixth Floor
San Antonio, TX 78205
Telephone: (210) 224-2000
Facsimile: (210) 224-7540

By: /s/ Robert K. Sugg

Raymond W. Battaglia
State Bar No. 01918055
Robert K. "Chip" Sugg
State Bar No. 24058296

CERTIFICATE OF SERVICE

I certify hereby that I have served a true and correct copy of the above and foregoing in the above numbered and styled proceeding, by United States Mail, postage prepaid, or electronic mail on this the 8th day of July, 2010, addressed to the following parties:

Limited Service Matrix attached hereto

/s/ Robert K. Sugg
Robert K. Sugg

Green Aggregates, Inc.
Case No. 07-53439-rbk
Limited Service Matrix

Green Aggregates, Inc.
c/o Mr. J. Nelson Happy
P.O. Box 464
Center Point, TX 78010

U.S. Trustee
P.O. Box 1539
San Antonio, TX 78295-1539

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San Antonio, TX 78212

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P.O. Box 464
Center Point, TX 78010

Walter McNeil Lowery
409 Lowery Street
Kerrville, TX 78028

Secured Creditors

Bank of the Ozarks
Kathryn W. Searcy (ECF)
P.O. Box 8811
Little Rock, AR 72231-8811

City of Garland
P.O. Box 461508
Garland, TX 75046-1508

Cooke County Appraisal District
201 North Dixon
Gainesville, TX 76240

County of Dallas
David Childs – Tax Assessor
P.O. Box 139066
Dallas, TX 75313-9066

Elizabeth H. Wilkins
17 Mullaney
Greenville, TX 75402

~~Equity Bank, SSB~~
~~5221 Spring Valley, #415~~
~~Dallas, TX 75254 (Duplicate)~~

Ford Motor Credit Company
260 Interstate North Circ. SE
Atlanta, GA 30339

Frank Bartel Tire, Inc.
P.O. Box 727
Aubrey, TX 76227

John Deere Construction
6400 NW 86th St.
P.O. Box 6600
Johnston, IA 50131-6600

Peoples Capital & Leasing Corp.
255 Bank St., 4th Floor
Waterbury, CT 06702

Presidential Financial Corporation
1979 Lakeside Parkway, #400
Tucker, GA 30084

Wise Appraisal District
400 E. Business Hwy. 380
Decatur, TX 76234-3165

Requests for Notice

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20 Largest Unsecured Creditors

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Dallas, TX 75254

Internal Revenue Service
P.O. Box 21126
Philadelphia, PA 19114

Comptroller of Public Accounts
Capitol Station
Austin, TX 78774-0100

Holt Texas, Ltd.
c/o Jones, Allen & Fuquay
8828 Greenville Avenue
Dallas, TX 75243

Small Business Administration
10737 Gateway West, #300
El Paso, TX 79935

Dial Lubricants
P.O. Box 540607
Dallas, TX 75354-0607

RAI/CCS
323 PR 1400
Bridgeport, TX 76426

Reeder Distributors
P.O. Box 225264
Dallas, TX 75222-5264

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Houston, TX 77010

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1040 S. Federal Hwy., #100
Delray Beach, FL 33483

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Austin Powder Company
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Cleveland, OH 44191

Alliance Haulers, Inc.
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Center Point, TX 78010

Texas Workforce Commission
101 East 15th Street
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3224 Bryn Mawr Drive
Dallas, TX 75225

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P.O. Box 2623
Carol Stream, IL 60132

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Irving, TX 75062

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Kerrville, TX 78028-3350

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